view, suggested by some of the English cases, that assent is necessary. In other words, they have regarded the transaction as bilateral or contractual. Many have required an actual assent, but others, seeing that justice would be furthered by sustaining grants to insane persons, and to those under a legal disability, — by whom actual assent is impossible, — and such grants as that in the principal case, have recognized the fiction of presumed assent in all cases where no dissent is shown. In so doing they seem to have reached a more desirable result, although at the expense of an objectionable legal fiction, than those courts which insist on actual assent. Yet in one class of cases, if they carried out their doctrine logically, great injustice would result. Where property is granted in trust, and the trustee refuses to accept the trust, they would be compelled to hold that dissent being shown, no assent can be presumed, and that, therefore, as the legal title cannot be held to have ever vested, the trust is void. Considering, then, that to hold actual assent necessary results in injustice, and that to presume assent results in fictions and logical inconsistency, it would seem well to accept the English doctrine, already recognized by the Supreme Court of the United States in the case of trusts, that a conveyance passes title without the grantee's assent, but that the latter may disclaim, and thereby divest himself both of the legal title and of any liabilities which may have accrued to him through its possession. *Adams* v. *Adams*, 21 Wall. 185.

PROOF OF FUTURE RENT AGAINST A BANKRUPT LESSEE. — It seems to be settled law that, under any bankruptcy act which makes no special provision as to leases, rent to accrue after the bankruptcy of the tenant is not provable against his estate. Rent in its nature is earned only on the completion of a certain period of occupation. Rent to accrue in the future is therefore no present debt; and since it may never become due, it was not considered such a liability as might be proved even under the broad provisions as to contingent liabilities in the United States bankruptcy acts of 1841 and 1867. *Deane* v. *Caldwell*, 127 Mass. 242. So, too, under the present act it is held that future rent is not provable, not being a fixed liability absolutely owing at the time of the filing of the petition, nor yet such an unliquidated claim as may be liquidated and proved under sect. 63 b. *In re Mahler*, 3 N. B. N. Rep. 39 (Dist. Ct., Mich.).

While this is undoubtedly the settled rule, yet the refusal to allow the lessor to prove for any actual loss he has suffered may on occasion result unfairly to the lessee as well as to the lessor. The trustee, it is true, may assume the lease, in which case the rent becomes part of the costs of administration. But if he fails to take over the lease, it would seem to follow that, apart from an eviction or an accepted surrender, the bankrupt tenant remains personally liable for the accruing rent, as in the case of other non-provable claims. Such has been the general rule both in England before the more recent statutes, *Copeland* v. *Stephens*, 1 B. & Ald. 593, and in this country under all of our federal acts. *Lansing* v. *Prendergast*, 9 Johns. 127 [1812]; *Bosler* v. *Kuhn*, 8 Watts & S. 183 [1844]; *Ex parte Houghton*, 1 Low. 554 [1871]; *In re Ells*, 98 Fed. Rep. 967 [1900]. This result is unfortunate in that it may saddle the lessor with an unprofitable tenant, and it is opposed to the policy of the bankrupt laws in allowing this liability to continue against the bankrupt lessee.

Another view is that the bankruptcy proceedings immediately sever the relation of landlord and tenant. *In re Jefferson*, 93 Fed. Rep. 948 [1899]; *Bray* v. *Cobb*, 100 Fed. Rep. 270 [1900]. This is obviously to create a rule as to leases which does not apply to other property, and is to disregard the fact that a lease is a form of conveyance rather than a mere contract. Moreover, this view is scarcely less objectionable as a matter of convenience to the parties to the lease. It may be that the tenant is in such a situation that, out of his earnings or other after-acquired property, he can pay his rent. In such a case it seems unjust to force him out of the premises, and it may equally harm the landlord to deprive him of a profitable lease, with no chance to secure damages from the estate.

To obviate these difficulties the English bankruptcy acts of 1869 and 1883, and the Massachusetts insolvent law, which preceded the present federal act (Mass. Pub. Stats. c. 157, sect. 26), had special provisions with regard to leases. They free the bankrupt from all personal liability, but provide that when the trustee disclaims the lease the lessor may prove the damages caused by the surrender as a debt against the bankrupt lessee's estate. Such damages would in general be the difference between the value of the lease and the then market value of the premises. *Ex parte Blake*, 11 Ch. D. 572. These provisions are clearly in the right line, protecting the lessor from entire loss, and releasing the bankrupt from future liability. It might be well to allow the tenant, on the trustee's disclaiming, to continue the lease on proof of his ability to pay the rent, letting the lessor prove for the amount of his loss if the bankrupt as well as the trustee disclaims the lease. Such a provision would fully protect both parties, and would do away with the present unsatisfactory conditions. It is much to be regretted that the subject was not dealt with in the act of 1898.

INJUNCTIONS AGAINST CONTINUING NUISANCES. — The interesting question whether an injunction is granted as a matter of course in the case of a continuing nuisance, or whether it is within the discretion of the court to deny this relief, if the resulting benefit to the plaintiff would be slight compared with the loss to the public or the individual, was suggested in a recent case. *Riedeman* v. *The Mt. Morris Co.*, New York Law Journal, Dec. 18. The plaintiff, who owned a tenement house in a business section of the city of New York, prayed that the defendant might be enjoined from so operating his electric lighting plant as to injure the plaintiff's premises by vibration and soot. The court held that the evidence of a nuisance was not conclusive, and further that as an injunction would cause serious injury to the defendant and to the public at large, with but a relatively slight benefit to the plaintiff, the latter should be denied injunctive relief, and accordingly remitted him to his remedy at law. The first ground clearly justifies the decision. As to the second there is much dispute. In England an injunction seems to be granted as a matter of positive right in the case of a continuing nuisance. *Broadbent* v. *The Imperial Gas Co.*, 7 DeG. M. & G. 434, 462. A number of decisions in America are to the same effect. *Hennessy* v. *Carmoney*, 50 N. J. Eq. 616. But New York has denied the relief where the injury was nominal, *Gray* v. *Manhattan R. Co.*, 128 N. Y. 499, and there are a number of *dicta* and a few decisions which allow the court to refuse an